COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 192 of 2004

New India Assurance Co. Ltd. …….. **Appellant.**

Versus

Smt. Manju Goswami
and others. …… **Respondents.**

Coram: Hon'ble P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of Motor Vehicles Act, 1988 (***in short the Act***) against the judgment and Award, dated 30-04-2004, passed in M.A.C.T. Petition No.11 of 2003, Smt. Manju Goswami and others Vs. Rajendra Singh Bora and another, by the Motor Accident Claims Tribunal/District Judge, Champawat ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 3,94,600/- and directed toe O.P. Nos. 1 and 2 to pay the same within two months. Thereafter, rider to pay interest @ 9% per annum has been added against the opposite parties. Aggrieved, the Insurance Company-O.P. No.2 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of income of deceased and quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

We have heard learned counsel for the appellant, Mr. M.K. Goel as well as learned counsel for the respondent no.1 to 6, Mr. Manoj Tewari, and have carefully gone through the entire material on record including the impugned judgment and award.

Brief facts are that that Rajesh Nath Goswami (***the deceased***) has died as a result of injuries sustained by

him in a motor accident occurred on 13.11.2002 involving Mahindra Jeep No. UP 01-1068 driven rashly and negligently by its driver. Claim petition has been made by his dependents alleging there that the deceased was working as Programme Operator in a Government Department and was getting Rs. 2,848/- per month. On the fateful day, he was going on his motor cycle and near Kalkatani, the offending vehicle hit his motor cycle form the wrong side with the result the deceased sustained grievous injuries and he was rushed to hospital. He was advised to approach higher medial center, therefore, while being taken to Delhi, he succumbed to his injuries in the way. O.P. No.1, owner of the vehicle contested the petition and filed his written statement and stated that he had stopped the vehicle on the left side of the road. The deceased came on the motor cycle on high speed and hit the jeep, which was standing. The accident was result of the own negligence on the part of the motor-cyclist. The O.P. has all necessary valid papers and the jeep was duly insured with the appellant. O.P. No.2-appellant also filed written statement and challenged that the driver was not holding valid driving licence.

The Tribunal framed as many as seven issues in the case. On Issue No.1, the Tribunal came to the conclusion the driving of jeep No. U.P. 01-1068 was driving the vehicle rashly and negligently with the result the deceased sustained grievous injuries and died as a result thereof. On **Issue No.2**, the Tribunal has held that the accident had not occurred due to the rashness or negligence on the part of the deceased. On **Issue No.3**, the Tribunal has held that the motor accident in question was not result of contributory negligence. On **Issue No.4**, the Tribunal has held that the petition is not defective on account of non-joinder of owner

of the motor cycle, as the deceased himself was the owner of the motor cycle an the deceased was holding a valid driving licence. It has been found that photo-copy of the driving licence was on record as paper no. 34/C/1. On **Issue No.5,** the Tribunal found that paper no. 24-C/1 is the photo copy of driving licence of the driver the Jeep involved in the accident. Accordingly, it has been held that the driver of the offending jeep was holding a valid driving licence. On **Issue No.6.,** the Tribunal has found that Cover Note of Policy paper No.24-C/2 is on record, which shows that the vehicle was duly insured with the appellant-insurance company on the date of accident. On **Issue No.7,** after discussing the oral and documentary evidence on record, the Tribunal has come to the conclusion that the income of the deceased was Rs. 2,848/- per month. Out to which the Tribunal has deducted 1/3rd towards personal expenses of the deceased and has determined monthly loss of dependency at Rs. 1900/- per month. The deceased was found aged 32 years and accordingly, the learned Tribunal has applied multiplier of **17** to determine just amount of compensation. The Tribunal has thus determined loss of dependency as 1,900 x 12 x 17= Rs. 3,87,600/-. In addition, the Tribunal has awarded Rs. 2000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium, love, etc. thereby total compensation of Rs. 3,94,600/- has been awarded, as mentioned earlier.

The appellant has assailed the impugned judgment and award only on the ground of income of the deceased and quantum of award and the learned counsel has pressed the present appeal only on these grounds. We have narrated above the findings of the learned Tribunal on the point of income of deceased and quantum of compensation. The compensation determined by the Tribunal appears to us to be just and proper for the death of the deceased in the present case.

It is most significant to mention here the grounds of challenged available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no others ground is available to the Insurance Company. No permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claims has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of 149 of the Motor Vehicle Act, 1988. The law provides the appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. WE are fortified in our view by the Apex Court judgment in the case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002)] 7, Supreme Court Cases, 456].*** In that case, it has bee observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory of the offending vehicle."*** Thus, in view of the law laid down by the Apex Court reported in (2002)7, S.C.C. 456 (supra), which is fully applicable in the preset appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No as to costs.

The amount in deposit with these Court be remitted to the Motor Accident Claims Tribunal concerned.

(B.S. Verma, J.) **(P. C. Verma, J.)**

26-08-2004
RCP